STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 28, 2003
v	No. 241762 Oakland Circuit Court
REGINALD D. HODO, Defendant-Appellant.	LC No. 2001-180787-FH

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced, as a habitual offender, second offense, MCL 769.10, to six months in prison for the possession with intent to deliver and felon in possession convictions and two years' imprisonment for each felony-firearm conviction. Defendant appeals as of right, and we affirm.

A court officer at the Oak Park District Court in Oakland County watched as defendant, who went to the courthouse to pay some traffic tickets, approached the court's metal detector. When the defendant looked up and noticed the detector, he stopped, began patting his clothing, turned around, and walked outside. He then flagged down a passing car. After the car pulled in front of the court building, the court officer watched as defendant leaned into the car and began transferring several items from his person into the car. He spent a significant amount of time in proximity to a backpack in which a large amount of the marijuana was found. At this point, the court officer became suspicious and had another employee contact the Oak Park police, who were located in the building adjacent to the courthouse. The police searched the car with the consent of the driver, defendant's mother, and found defendant's backpack. When he was subsequently arrested, several more bags of marijuana were found in defendant's pocket. He admitted to police that he owned both the backpack and the marijuana (though he claimed it was for personal use), and he stipulated at trial that the substance was, in fact, marijuana. In all, nearly one-half pound of marijuana, divided into packages of various sizes, was found, all of which defendant admitted to owning, and was found either in the backpack or on his person. There was no evidence that defendant had any paraphernalia indicating that the marijuana was for personal use, and police opined that the large amount and the packaging indicated that it was not for defendant's personal use.

Defendant's theory of the case was that possession of the contraband in Oakland County did not occur because his mother did not drive him to the courthouse in Oak Park. Rather, defendant's sister testified she drove him to pick up his car that was in for repairs. When the car was not ready to be returned, she dropped defendant off at the court in Oak Park to pay parking tickets. However, she could not wait for defendant to pay the tickets. Consequently, she telephoned her mother to pick defendant up at the courthouse. Defendant's father also testified that he noticed the backpack that belonged to defendant in the car at his home in Wayne County earlier that morning. To the contrary, the prosecutor presented evidence to establish that defendant was in the vehicle with the backpack when he arrived at court. The investigating officer testified that defendant indicated that his mother "took" him to pay the tickets. The investigating officer was not permitted to testify regarding a statement given by defendant's mother, allegedly indicating that she had driven him to the courthouse, and defendant's mother did not testify at trial.

Defendant alleges that the prosecution presented insufficient evidence to support his possession with intent to deliver marijuana conviction, and that the prosecutor failed to prove that this crime was committed, if at all, in Oakland County. We disagree. We review the evidence de novo in the light most favorable to the prosecution to determine whether sufficient evidence exists to allow a rational trier of fact to find a defendant guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999), citing *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748, amended 441 Mich 1201 (1992). It is the province of the trier of fact, and not this Court, to determine what inferences may be fairly drawn from the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (1998). Questions of credibility and intent are properly resolved by the trier of fact, *In re Forfeiture of $25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996), and deference must be given to the jury's determination. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

Possession with intent to deliver a controlled substance requires the prosecution to prove (1) that defendant knowingly possessed it; (2) that defendant intended to deliver it to someone else; and (3) that the substance possessed was a controlled substance with the knowledge that it was a controlled substance. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Possession can be actual or constructive. *Hardiman, supra* at 421. Constructive possession can be shown where one has dominion or control over the substance. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Intent to deliver can be "inferred from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest." *Wolfe, supra* at 524. Venue is a part of every criminal case that must be proven by the prosecutor, but it is not an essential element. *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1995).

Viewing the evidence in the light most favorable to the prosecution, *Johnson, supra*, there was sufficient evidence of dominion, control, and knowledge to establish possession with an intent to deliver. Defendant was found with drugs on his person, his fingerprints were found on one of many baggies of marijuana in the backpack, and he admitted that the backpack belonged to him. The credibility of the evidence that the drugs were for personal use and that possession could not be established because defendant was not driven to court with the backpack was presented to the jury, which rejected those assertions. *Lemmon, supra*; *In re Forfeiture, supra*.

Defendant next alleges that the prosecution presented insufficient evidence to support his felon in possession of a firearm conviction, and that the prosecutor failed to prove that this crime was committed, if at all, in Oakland County. We disagree. To convict a defendant of the crime of felon in possession of a firearm, the prosecution must prove that (1) the defendant was previously convicted of a felony; (2) the statutorily specified time had not expired after the following conditions were met: (a) defendant paid all fines imposed by the felony; (b) defendant served all prison terms imposed for the felony; and (c) defendant successfully met the conditions of any probation or parole imposed for the felony; and (3) that the defendant possessed a firearm. *People v Harlan*, ___ Mich App ___; ___ NW2d ___ (2003), slip op 4-5 n 3; *People v Tice*, 220 Mich App 47, 53; 558 NW2d 245 (1996); MCL 750.224f. Possession of a firearm may be actual or constructive, and constructive possession of a firearm can be shown where one has proximity to it and dominion and control over it. *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989).

Viewing the evidence in the light most favorable to the prosecution, *Johnson, supra*, the prosecution presented sufficient evidence that defendant was a felon in proximity to, and with dominion and control over, a firearm in Oakland County. The firearm was found inside of the backpack defendant admitted to owning. Defendant was close enough to the backpack for a sufficient period of time to exercise dominion and control over it. Defendant told police that the firearm was his and that he had purchased it as a gift for his father. At trial, defendant stipulated that he was a convicted felon, that he had not met the conditions to regain his right to possess a firearm, and that the firearm found was, in fact, operable. Based on these facts, a rational trier of fact could find, beyond a reasonable doubt, that defendant was guilty of the crime of felon in possession of a firearm.

Lastly, defendant alleges that the prosecution presented insufficient evidence to support his felony-firearm convictions, and that the prosecutor failed to prove that these crimes were committed, if at all, in Oakland County. We disagree. In order to convict a defendant of felony-firearm, the prosecution must prove that "the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession with intent to deliver marijuana is a felony, MCL 333.7401(2)(d)(iii), as is felon in possession of a firearm, MCL 750.224f(3). As we concluded above, sufficient evidence existed to permit a rational trier of fact to convict defendant of these two felonies and defendant's possession of a firearm. Accordingly, viewing the evidence in a light most favorable to the prosecution, *Johnson, supra*, there was sufficient evidence to permit a rational trier of fact to conclude that defendant was guilty, beyond a reasonable doubt, of two counts of felony-firearm.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood